

(7) inform contracting parties, through the Secretary of State of the United States, of all general measures taken in connection with the implementation of the agreement; and

(8) take such other action as may be considered appropriate to implement the agreement and administer this chapter.

(Pub. L. 97-325, § 4, Oct. 15, 1982, 96 Stat. 1604.)

§ 4404. Duties of Secretary of State

The Secretary of State, with the concurrence of the Secretary of Agriculture, may take such action as may be considered appropriate to assert and protect the rights of the United States under the agreement.

(Pub. L. 97-325, § 5, Oct. 15, 1982, 96 Stat. 1605.)

§ 4405. Fees and charges

(a) Testing or inspection

Any organization designated by the Secretary of Agriculture to test or inspect equipment may establish reasonable fees to cover the costs of such testing or inspection. Such fees shall be payable directly to the organization by those seeking inspection or testing.

(b) Issuance of certificates of compliance

The Secretary of Agriculture may, effective October 1, 1982, fix and cause to be collected reasonable fees to cover, as nearly as practicable, the costs to the Department of Agriculture incurred in connection with the issuance of certificates of compliance as provided under section 4403(2) of this title. All fees collected shall be credited to the current appropriation account that incurs the cost and shall be available without fiscal year limitation to pay the expenses of the Secretary of Agriculture incident to the issuance of certificates of compliance under this chapter.

(Pub. L. 97-325, § 6, Oct. 15, 1982, 96 Stat. 1605.)

§ 4406. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Agriculture for the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, such sums as are necessary to carry out the provisions of this chapter, but not to exceed \$100,000 in any fiscal year.

(Pub. L. 97-325, § 7, Oct. 15, 1982, 96 Stat. 1605.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 97-325 which enacted this chapter and section 2212c of this title, amended sections 5315 and 5316 of Title 5, Government Organization and Employees, repealed section 3 of Reorg. Plan No. 2 of 1953, and enacted provisions set out as a note under section 2212c of this title.

CHAPTER 76—DAIRY RESEARCH AND PROMOTION

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SUBCHAPTER I—DAIRY PROMOTION PROGRAM

§ 4501. Congressional findings and declaration of policy

(a) Congress finds that—

(1) dairy products are basic foods that are a valuable part of the human diet;

(2) the production of dairy products plays a significant role in the Nation's economy the milk from which dairy products are manufactured is produced by thousands of milk producers, and dairy products are consumed by millions of people throughout the United States;

(3) dairy products must be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets for dairy products are vital to the welfare of milk producers and those concerned with marketing, using, and producing dairy products, as well as to the general economy of the Nation; and

(5) dairy products move in interstate and foreign commerce, and dairy products that do not move in such channels of commerce directly burden or affect interstate commerce of dairy products.

(b) It, therefore, is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided herein, of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use and on imported dairy products) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products. Nothing in this subchapter may be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk or the right of any person to import dairy products.

(Pub. L. 98-180, title I, §110, Nov. 29, 1983, 97 Stat. 1136; Pub. L. 107-171, title I, §1505(h)(1), May 13, 2002, 116 Stat. 210.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-171 inserted “and on imported dairy products” after “commercial use” and struck out “produced in the United States” after “fluid milk and dairy products” in first sentence and inserted “or the right of any person to import dairy products” before period at end of second sentence.

SHORT TITLE

For short title of title I of Pub. L. 98-180 as the “Dairy Production Stabilization Act of 1983”, see Short Title of 1983 Amendment note set out under section 1421 of this title.

§ 4502. Definitions

As used in this subchapter—

(a) the term “Board” means the National Dairy Promotion and Research Board established under section 4504 of this title;

(b) the term “Department” means the Department of Agriculture;

(c) the term “Secretary” means the Secretary of Agriculture;

(d) the term “milk” means any class of cow’s milk;

(e) the term “dairy products” means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products;

(f) the term “fluid milk products” means those milk products normally consumed in liquid form as a beverage;

(g) the term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(h) the term “producer” means any person engaged in the production of milk for commercial use;

(i) the term “promotion” means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of and demand for dairy products;

(j) the term “research” means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for milk and dairy products;

(k) the term “nutrition education” means those activities intended to broaden the understanding of sound nutritional principles including the role of milk and dairy products in a balanced diet;

(l) the term “United States”, when used in a geographical sense, means all of the States, the District of Columbia, and the Commonwealth of Puerto Rico;

(m) the term “imported dairy product” means any dairy product that is imported into the United States, including dairy products imported into the United States in the form of—

- (1) milk, cream, and fresh and dried dairy products;
- (2) butter and butterfat mixtures;
- (3) cheese; and
- (4) casein and mixtures;

(n) the term “importer” means a person that imports an imported dairy product into the United States; and

(o) the term “Customs” means the United States Customs Service.

(Pub. L. 98-180, title I, §111, Nov. 29, 1983, 97 Stat. 1136; Pub. L. 107-171, title I, §1505(a), (h)(2), May 13, 2002, 116 Stat. 207, 210; Pub. L. 110-234, title I, §1507(b), May 22, 2008, 122 Stat. 997; Pub. L. 110-246, §4(a), title I, §1507(b), June 18, 2008, 122 Stat. 1664, 1725.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (l). Pub. L. 110-246, §1507(b)(1), added subsec. (l) and struck out former subsec. (l) which read as follows: “the term ‘United States’ as used in sections 4501 through 4508 of this title means the forty-eight contiguous States in the continental United States;”.

Subsec. (m). Pub. L. 110-246, §1507(b)(2), struck out “(as defined in subsection (l) of this section)” before “, including”.

2002—Subsec. (d). Pub. L. 107-171, §1505(h)(2), struck out “produced in the United States” before semicolon at end.

Subsec. (m) to (o). Pub. L. 107-171, §1505(a), added subsecs. (m) to (o).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4503. Issuance of orders

(a) Notice and opportunity for public comment

During the period beginning with November 29, 1983, and ending thirty days after receipt of a proposal for an initial dairy products promotion and research order, the Secretary shall publish such proposed order and give due notice and opportunity for public comment upon the proposed order. The proposal for an order may be submitted by an organization certified under section 4505 of this title or by any interested person affected by the provisions of this subchapter.

(b) Effective date of orders

After notice and opportunity for public comment are given, as provided for in subsection (a) of this section, the Secretary shall issue a dairy products promotion and research order. Such order shall become effective not later than ninety days following publication of the proposal.

(c) Amendment of orders

The Secretary may, from time to time, amend a dairy products promotion and research order.

(d) Order implementation and international trade obligations

The Secretary, in consultation with the United States Trade Representative, shall ensure that the order is implemented in a manner consistent with the international trade obligations of the Federal Government.

(Pub. L. 98-180, title I, §112, Nov. 29, 1983, 97 Stat. 1137; Pub. L. 107-171, title I, §1505(g), May 13, 2002, 116 Stat. 209.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107-171, which directed the addition of subsec. (d) at the end of section 112 of the Dairy Promotion Stabilization Act of 1983, was executed by adding subsec. (d) at the end of this section to reflect the probable intent of Congress.

§ 4504. Required terms in orders

Any order issued under this subchapter shall contain terms and conditions as follows:

(a) The order shall provide for the establishment and administration of appropriate plans or projects for advertisement and promotion of the sale and consumption of dairy products, for research projects related thereto, for nutrition education projects, and for the disbursement of necessary funds for such purposes. Any such plan or project shall be directed toward the sale and marketing or use of dairy products to the end that the marketing and use of dairy products may be encouraged, expanded, improved, or made more acceptable. No such advertising or sales promotion program shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

(b) NATIONAL DAIRY PROMOTION AND RESEARCH BOARD.—

(1) The order shall provide for the establishment and appointment by the Secretary of a National Dairy Promotion and Research Board that shall consist of not less than thirty-six members.

(2) Except as provided in paragraph (6), the members of the Board shall be milk producers appointed by the Secretary from nominations submitted by eligible organizations certified under section 4505 of this title, or, if the Secretary determines that a substantial number of milk producers are not members of, or their interests are not represented by, any such eligible organization, then from nominations made by such milk producers in the manner authorized by the Secretary.

(3) In making such appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of milk production volume throughout the United States.

(4) In determining geographic representation, whole States shall be considered as a unit.

(5) A region may be represented by more than one director and a region may be made up of more than one State.

(6) IMPORTERS.—

(A) INITIAL REPRESENTATION.—In making initial appointments to the Board of importer representatives, the Secretary shall

appoint 2 members who represent importers of dairy products and are subject to assessments under the order.

(B) SUBSEQUENT REPRESENTATION.—At least once every 3 years after the initial appointment of importer representatives under subparagraph (A), the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous 3 years and, on the basis of that review, shall re-apportion importer representation on the Board to reflect the proportional share of the United States market by domestic production and imported dairy products.

(C) ADDITIONAL MEMBERS; NOMINATIONS.—The members appointed under this paragraph—

(i) shall be in addition to the total number of members appointed under paragraph (2); and

(ii) shall be appointed from nominations submitted by importers under such procedures as the Secretary determines to be appropriate.

(7) The term of appointment to the Board shall be for three years with no member serving more than two consecutive terms, except that initial appointments shall be proportionately for one-year, two-year, and three-year terms.

(8) The Board shall appoint from its members an executive committee whose membership shall equally reflect each of the different regions in the United States in which milk is produced as well as importers of dairy products.

(9) The executive committee shall have such duties and powers as are conferred upon it by the Board.

(10) Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board including a per diem allowance as recommended by the Board and approved by the Secretary.

(c) The order shall define the powers and duties of the Board that shall include only the powers enumerated in this section. These shall include, in addition to the powers set forth elsewhere in this section, the powers to (1) receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendations to the Secretary regarding such proposals, (2) administer the order in accordance with its terms and provisions, (3) make rules and regulations to effectuate the terms and provisions of the order, (4) receive, investigate, and report to the Secretary complaints of violations of the order, and (5) recommend to the Secretary amendments to the order. The Board shall solicit, among others, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use.

(d) The order shall provide that the Board shall develop and submit to the Secretary for approval any promotion, research, or nutrition education plan or project and that any such plan or project must be approved by the Secretary before becoming effective.

(e) BUDGETS.—

(1) PREPARATION AND SUBMISSION.—The order shall require the Board to submit to the Secretary for approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including projected costs of dairy products promotion and research projects.

(2) FOREIGN MARKET EFFORTS.—The order shall authorize the Board to expend in the maintenance and expansion of foreign markets an amount not to exceed the amount collected from United States producers for a fiscal year. Of those funds, for each of the 2002 through 2012 fiscal years, the Board's budget may provide for the expenditure of revenues available to the Board to develop international markets for, and to promote within such markets, the consumption of dairy products produced or manufactured in the United States.

(f) The order shall provide that the Board, with the approval of the Secretary, may enter into agreements for the development and conduct of the activities authorized under the order as specified in subsection (a) of this section and for the payment of the cost thereof with funds collected through assessments under the order. Any such agreement shall provide that (1) the contracting party shall develop and submit to the Board a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project, (2) the plan or project shall become effective upon the approval of the Secretary, and (3) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, and make periodic reports to the Board of activities conducted, and such other reports as the Secretary or the Board may require.

(g) ASSESSMENTS.—

(1) The order shall provide that each person making payment to a producer for milk produced in the United States and purchased from the producer shall, in the manner as prescribed by the order, collect an assessment based upon the number of hundredweights of milk for commercial use handled for the account of the producer and remit the assessment to the Board.

(2) The assessment shall be used for payment of the expenses in administering the order, with provision for a reasonable reserve, and shall include those administrative costs incurred by the Department after an order has been promulgated under this subchapter.

(3) RATE.—

(A) IN GENERAL.—The rate of assessment for milk produced in the United States prescribed by the order shall be 15 cents per hundredweight of milk for commercial use or the equivalent thereof, as determined by the Secretary.

(B) IMPORTED DAIRY PRODUCTS.—The rate of assessment for imported dairy products prescribed by the order shall be 7.5 cents per

hundredweight of milk for commercial use or the equivalent thereof, as determined by the Secretary.

(4) A milk producer or the producer's cooperative who can establish that the producer is participating in active, ongoing qualified State or regional dairy product promotion or nutrition education programs intended to increase consumption of milk and dairy products generally shall receive credit in determining the assessment due from such producer for contributions to such programs of up to 10 cents per hundredweight of milk marketed or, for the period ending six months after November 29, 1983, up to the aggregate rate in effect on November 29, 1983, of such contributions to such programs (but not to exceed 15 cents per hundredweight of milk marketed) if such aggregate rate exceeds 10 cents per hundredweight of milk marketed.

(5) Any person marketing milk of that person's own production directly to consumers shall remit the assessment directly to the Board in the manner prescribed by the order.

(6) IMPORTERS.—

(A) IN GENERAL.—The order shall provide that each importer of imported dairy products shall pay an assessment to the Board in the manner prescribed by the order.

(B) USE OF ASSESSMENTS ON IMPORTED DAIRY PRODUCTS.—Assessments collected on imported dairy products shall not be used for foreign market promotion.

(7) REFUND OF ASSESSMENTS ON CERTAIN IMPORTED PRODUCTS.—

(A) IN GENERAL.—An importer shall be entitled to a refund of any assessment paid under this subsection on imported dairy products imported under a contract entered into prior to the date of enactment of the Food, Conservation, and Energy Act of 2008.

(B) EXPIRATION.—Refunds under subparagraph (A) shall expire 1 year after the date of enactment of the Food, Conservation, and Energy Act of 2008.

(h) The order shall require the Board to (1) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe, (2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and (3) account for the receipt and disbursement of all funds entrusted to it.

(i) The order shall provide that the Board, with the approval of the Secretary, may invest, pending disbursement under a plan or project, funds collected through assessments authorized under this subchapter only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(j) The order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing governmental policy or action except as provided by subsection (c)(5) of this section.

(k) The order shall require that each importer of imported dairy products, each person receiving milk from farmers for commercial use, and any person marketing milk of that person's own production directly to consumers, maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order. Such information shall be made available to the Secretary as is appropriate to the administration or enforcement of this subchapter, or any order or regulation issued under this subchapter. All information so obtained shall be kept confidential by all officers and employees of the Department, and only such information so obtained as the Secretary deems relevant may be disclosed by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order with reference to which the information to be disclosed was obtained. Nothing in this subsection may be deemed to prohibit (1) the issuance of general statements, based upon the reports, of the number of persons subject to an order or statistical data collected therefrom, which statements do not identify the information furnished by any person, or (2) the publication, by direction of the Secretary, of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such person. No information obtained under the authority of this subchapter may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this subchapter and any investigatory or enforcement action necessary for the implementation of this subchapter. Any person violating the provisions of this subsection shall, upon conviction, be subject to a fine of not more than \$1,000, or to imprisonment for not more than one year, or both, and, if an officer or employee of the Board or the Department, shall be removed from office.

(l) The order shall provide terms and conditions, not inconsistent with the provisions of this subchapter, as necessary to effectuate the provisions of the order.

(Pub. L. 98–180, title I, § 113, Nov. 29, 1983, 97 Stat. 1137; Pub. L. 104–127, title I, § 152, Apr. 4, 1996, 110 Stat. 922; Pub. L. 107–171, title I, § 1505(b)–(e), May 13, 2002, 116 Stat. 208, 209; Pub. L. 110–234, title I, § 1507(a), (d)–(f), May 22, 2008, 122 Stat. 997; Pub. L. 110–246, § 4(a), title I, § 1507(a), (d)–(f), June 18, 2008, 122 Stat. 1664, 1725.)

REFERENCES IN TEXT

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (g)(7), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (e)(2). Pub. L. 110–246, § 1507(a), substituted “2012” for “2007”.

Subsec. (g)(3). Pub. L. 110–246, § 1507(d), added par. (3) and struck out former par. (3) which read as follows: “The rate of assessment for milk produced in the United States and imported dairy products prescribed by the order shall be 15 cents per hundredweight of milk for commercial use or the equivalent thereof, as determined by the Secretary.”

Subsec. (g)(6)(B), (C). Pub. L. 110–246, § 1507(e), redesignated subpar. (C) as (B) and struck out former subpar. (B). Prior to amendment, text read as follows: “The assessment on imported dairy products shall be paid by the importer to Customs at the time the entry documents are filed with Customs. Customs shall remit the assessments to the Board. For purposes of this subparagraph, the term ‘importer’ includes persons who hold title to foreign-produced dairy products immediately upon release by Customs, as well as persons who act on behalf of others, as agents, brokers, or consignees, to secure the release of dairy products from Customs.”

Subsec. (g)(7). Pub. L. 110–246, § 1507(f), added par. (7). 2002—Subsec. (b). Pub. L. 107–171, § 1505(b), inserted heading, designated first to ninth sentences as pars. (1) to (5) and (7) to (10), respectively, and realigned margins, substituted “Except as provided in paragraph (6), the members of the Board” for “Members of the Board” in par. (2) and “is produced as well as importers of dairy products” for “is produced” in par. (8), and added par. (6).

Subsec. (e). Pub. L. 107–171, § 1505(c), inserted heading, designated existing provisions as par. (1), inserted heading, and struck out “For each of fiscal years 1997 through 2001, the Board’s budget may provide for the expenditure of revenues available to the Board to develop international markets for, and to promote within such markets, the consumption of dairy products produced in the United States from milk produced in the United States.” at end, and added par. (2).

Subsec. (g). Pub. L. 107–171, § 1505(d), inserted heading, designated first to fifth sentences as pars. (1) to (5), respectively, and realigned margins, inserted “for milk produced in the United States and imported dairy products” after “The rate of assessment” and “, as determined by the Secretary” before period at end in par. (3), and added par. (6).

Subsec. (k). Pub. L. 107–171, § 1505(e), substituted “importer of imported dairy products, each person receiving milk from farmers” for “person receiving milk from farmers” in first sentence.

1996—Subsec. (e). Pub. L. 104–127 inserted at end “For each of fiscal years 1997 through 2001, the Board’s budget may provide for the expenditure of revenues available to the Board to develop international markets for, and to promote within such markets, the consumption of dairy products produced in the United States from milk produced in the United States.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

§ 4505. Certification of organizations

(a) The eligibility of any organization to represent milk producers, and to participate in the making of nominations under section 4504 of this title shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established by the Secretary under this section and the Secretary’s determination as to eligibility shall be final.

(b) Certification shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified

by the Secretary, including, but not limited to, the following:

- (1) geographic territory covered by the organization's active membership;
- (2) nature and size of the organization's active membership including the proportion of the total number of active milk producers represented by the organization;
- (3) evidence of stability and permanency of the organization;
- (4) sources from which the organization's operating funds are derived;
- (5) functions of the organization; and
- (6) the organization's ability and willingness to further the aims and objectives of this subchapter.

The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.

(Pub. L. 98-180, title I, § 114, Nov. 29, 1983, 97 Stat. 1140.)

§ 4506. Requirement of referendum

(a) Within the sixty-day period immediately preceding September 30, 1985, the Secretary shall conduct a referendum among producers who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use for the purpose of ascertaining whether the order then in effect shall be continued. Such order shall be continued only if the Secretary determines that it has been approved by not less than a majority of the producers voting in the referendum, who during a representative period (as determined by the Secretary) have been engaged in the production of milk for commercial use. If continuation of the order is not approved by a majority of the producers voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that such action is favored by a majority of the producers voting in the referendum and shall terminate the order in an orderly manner as soon as practicable after such determination.

(b) The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this section and section 4507 of this title, except for the salaries of Government employees.

(Pub. L. 98-180, title I, § 115, Nov. 29, 1983, 97 Stat. 1141.)

§ 4507. Suspension and termination of orders

(a) Determination by Secretary

After September 30, 1985, the Secretary shall, whenever the Secretary finds that any order issued under this subchapter or any provision thereof obstructs or does not tend to effectuate the declared policy of this subchapter, terminate or suspend the operation of such order or such provisions thereof.

(b) Referendum

After September 30, 1985, the Secretary may conduct a referendum at any time, and shall hold a referendum on request of a representative group comprising 10 per centum or more of the number of producers and importers subject to the order, to determine whether the producers and importers favor the termination or suspension of the order. The Secretary shall suspend or terminate collection of assessments under the order within six months after the Secretary determines that suspension or termination of the order is favored by a majority of the producers voting in the referendum who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use and importers voting in the referendum (who have been engaged in the importation of dairy products during the same representative period, as determined by the Secretary) and shall terminate the order in an orderly manner as soon as practicable after such determination.

(c) Action not considered an order

The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this subchapter.

(Pub. L. 98-180, title I, § 116, Nov. 29, 1983, 97 Stat. 1141; Pub. L. 107-171, title I, § 1505(f), May 13, 2002, 116 Stat. 209.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-171, which directed amendment of section 116(b) of the Dairy Promotion Stabilization Act of 1983 by inserting “and importers” after “of producers” and after “whether the producers” in first sentence and inserting “and importers voting in the referendum (who have been engaged in the importation of dairy products during the same representative period, as determined by the Secretary)” after “commercial use” in second sentence, was executed by making the insertions in subsec. (b) of this section, section 116 of the Dairy Production Stabilization Act of 1983, to reflect the probable intent of Congress.

§ 4508. Cooperative association representation

Whenever, under the provisions of this subchapter, the Secretary is required to determine the approval or disapproval of producers, the Secretary shall consider the approval or disapproval by any cooperative association of producers, engaged in a bona fide manner in marketing milk or the products thereof, as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers. If a cooperative association of producers elects to vote on behalf of its members, such cooperative association shall provide each producer, on whose behalf the cooperative association is expressing approval or disapproval, a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. Such information shall inform the producer of procedures to follow to cast an individual ballot should the producer so choose within the period of time established by the Secretary for casting ballots. Such notification shall be made at least thirty days prior to the referendum and shall include an official ballot.

The ballots shall be tabulated by the Secretary and the vote of the cooperative association shall be adjusted to reflect such individual votes.

(Pub. L. 98-180, title I, § 117, Nov. 29, 1983, 97 Stat. 1141.)

§ 4509. Petition and review

(a) Any person subject to any order issued under this subchapter may file with the Secretary a petition stating that any such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and requesting a modification thereof or an exemption therefrom. The petitioner shall thereupon be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary. After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant or carries on business are hereby vested with jurisdiction to review such ruling, if a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had on the Secretary by delivering a copy of the complaint to the Secretary. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires.

(Pub. L. 98-180, title I, § 118, Nov. 29, 1983, 97 Stat. 1142.)

§ 4510. Enforcement

(a) Restraining order; civil action; minor violation

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued under this subchapter. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General minor violations of this subchapter whenever the Secretary believes that the administration and enforcement of this subchapter would be adequately served by suitable written notice or warning to any person committing such violation.

(b) Civil penalties

Any person who willfully violates any provision of any order issued by the Secretary under this subchapter shall be assessed a civil penalty by the Secretary of not more than \$1,000 for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by the order, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States.

(c) Availability of other remedies

The remedies provided in subsections (a) and (b) of this section shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 98-180, title I, § 119, Nov. 29, 1983, 97 Stat. 1142.)

§ 4511. Investigations; power to subpoena and take oaths and affirmations; aid of courts

The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this subchapter or to determine whether any person subject to the provisions of this subchapter has engaged or is about to engage in any act that constitutes or will constitute a violation of any provision of this subchapter or of any order, or rule or regulation issued under this subchapter. For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records. The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Process in any such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found.

(Pub. L. 98-180, title I, § 120, Nov. 29, 1983, 97 Stat. 1143.)

§ 4512. Administrative provisions

(a) Nothing in this subchapter may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

(b) The provisions of this subchapter applicable to orders shall be applicable to amendments to orders.

(Pub. L. 98-180, title I, § 121, Nov. 29, 1983, 97 Stat. 1143.)

§ 4513. Authorization of appropriations

There are hereby authorized to be appropriated such funds as are necessary to carry out the provisions of this subchapter. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provisions of any order issued under the terms of this subchapter.

(Pub. L. 98-180, title I, § 122, Nov. 29, 1983, 97 Stat. 1143.)

§ 4514. Dairy reports

The Secretary of Agriculture shall submit to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the following reports:

(1) Not later than July 1, 1984, a report on the effect of applying, nationally, standards similar to the current California standards for fluid milk products in their final consumer form, as they would relate to—

(A) consumer acceptance, overall consumer consumption trends, and total per capita consumption;

(B) nutritional augmentation, particularly for young and older Americans;

(C) implementing improved interagency enforcement of minimum standards to prevent consumer fraud and deception;

(D) multiple component pricing for producer milk;

(E) reduced Commodity Credit Corporation purchases;

(F) consistency of product quality throughout the year and between marketing regions of the United States; and

(G) consumer prices.

(2) Not later than December 31, 1984, a report on (A) recommendations for changes in the application of the parity formula to milk so as to make the formula more consistent with modern production methods and with special attention to the cost of producing milk as a result of changes in productivity, and (B) the feasibility of imposing a limitation on the total amount of payments and other assistance a producer of milk may receive during a year under section 1446(d) of this title.

(3) Not later than April 15, 1985, a report on the effectiveness of the paid diversion program carried out under section 1446(d) of this title.

(4) Not later than July 1, 1985, and July 1 of each year after the date of enactment of this title,¹ an annual report describing activities conducted under the dairy products promotion and research order issued under this subchapter, and accounting for the receipt and disbursement of all funds received by the National Dairy Promotion and Research Board under such order including an independent analysis of the effectiveness of the program.

(Pub. L. 98-180, title III, §301, Nov. 29, 1983, 97 Stat. 1150.)

REFERENCES IN TEXT

The date of enactment of this title, referred to in par. (4), means the date of enactment of title III of Pub. L. 98-180, which was approved Nov. 29, 1983.

CODIFICATION

Section was enacted as part of Pub. L. 98-180, known as the Dairy and Tobacco Adjustment Act of 1983, and not as part of title I of Pub. L. 98-180, known as the Dairy Production Stabilization Act of 1983, subtitle B of which comprises this subchapter.

SUBCHAPTER II—DAIRY RESEARCH PROGRAM**§ 4531. Definitions**

For purposes of this subchapter—

¹ See References in Text note below.

(1) the term “board” means the board of trustees of the Institute;

(2) the term “Department” means the Department of Agriculture;

(3) the term “dairy products” means manufactured products that are derived from the processing of milk, and includes fluid milk products;

(4) the term “fluid milk products” means those milk products normally consumed in liquid form as a beverage;

(5) the term “Fund” means the Dairy Research Trust Fund established by section 4536 of this title;

(6) the term “Institute” means the National Dairy Research Endowment Institute established by section 4532 of this title;

(7) the term “milk” means any class of cow’s milk marketed in the United States;

(8) the term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(9) the term “producer” means any person engaged in the production of milk for commercial use;

(10) the term “research” means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for milk and dairy products;

(11) the term “Secretary” means the Secretary of Agriculture unless the context specifies otherwise; and

(12) the term “United States”, when used in a geographical sense, means all of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 98-180, title I, §130, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1367; amended Pub. L. 110-234, title I, §1507(c), May 22, 2008, 122 Stat. 997; Pub. L. 110-246, §4(a), title I, §1507(c), June 18, 2008, 122 Stat. 1664, 1725.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Par. (12). Pub. L. 110-246, §1507(c), added par. (12) and struck out former par. (12) which read as follows: “the term ‘United States’ means the several States and the territories and possessions of the United States, except that for purposes of sections 4532, 4534(a), and 4537 of this title, and paragraph (7) of this section, such term means the forty-eight contiguous States in the continental United States.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

§ 4532. Establishment of National Dairy Research Endowment Institute

The Secretary of Agriculture may establish in the Department of Agriculture a National Dairy Research Endowment Institute whose function

shall be to aid the dairy industry through the implementation of the dairy products research order, which its board of trustees shall administer, and the use of monies made available to its board of trustees from the Dairy Research Trust Fund to implement the order. In implementing the order, the Institute shall provide a permanent system for funding scientific research activities designed to facilitate the expansion of markets for milk and dairy products marketed in the United States. The Institute shall be headed by a board of trustees composed of the members of the National Dairy Promotion and Research Board. The board may appoint from among its members an executive committee whose membership shall reflect equally each of the different regions in the United States in which milk is produced. The executive committee shall have such duties and powers as are delegated to it by the board. The members of the board shall serve without compensation. While away from their homes or regular places of business in the performance of services for the board, members of the board shall be allowed reasonable travel expenses, including a per diem allowance in lieu of subsistence, as recommended by the board and approved by the Secretary, except that there shall be no duplication of payment for such expenses.

(Pub. L. 98-180, title I, §131, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1368.)

§ 4533. Issuance of order

(a) Publication in Federal Register; public comment; submission

After receipt of a proposed dairy products research order, the Secretary may publish such proposed order in the Federal Register and shall give notice and reasonable opportunity for public comment on such proposed order. Such proposed order may be submitted by an organization certified under section 4505 of this title or by any interested person affected by the provisions of subchapter I of this chapter.

(b) Effective date of order

After the Secretary provides for such publication and a reasonable opportunity for a hearing under subsection (a) of this section, the Secretary may issue the dairy products research order. The order so issued shall become effective not later than 90 days after publication in the Federal Register of the order.

(c) Amendment of order

The Secretary may amend, from time to time, the dairy products research order issued under subsection (b) of this section.

(Pub. L. 98-180, title I, §132, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1369.)

§ 4534. Required terms of order; agreements under order; records

(a) Required terms

The dairy products research order issued under section 4533(b) of this title shall—

(1) provide for the establishment and administration, by the Institute, of appropriate scientific research activities designed to facili-

tate the expansion of markets for dairy products marketed in the United States;

(2) specify the powers of the board, including the powers to—

(A) receive and evaluate, or on its own initiative develop and budget for, research plans or projects designed to—

(i) increase the knowledge of human nutritional needs and the relationship of milk and dairy products to these needs;

(ii) improve dairy processing technologies, particularly those appropriate to small- and medium-sized family farms;

(iii) develop new dairy products; and

(iv) appraise the effect of such research on the marketing of dairy products;

(B) make recommendations to the Secretary regarding such plans and projects;

(C) administer the order in accordance with its terms and provisions;

(D) make rules and regulations to effectuate the terms and provisions of the order;

(E) receive, investigate, and report to the Secretary complaints of violations of the order;

(F) recommend to the Secretary amendments to the order;

(G) enter into agreements, with the approval of the Secretary, for the conduct of activities authorized under the order and for payment of the cost of such activities with any monies in the Fund other than monies appropriated or transferred by the Secretary to the Fund;

(H) with the approval of the Secretary, establish advisory committees composed of individuals other than members of the board, and pay the necessary and reasonable expenses and fees of the members of such committees; and

(I) with the approval of the Secretary, appoint or employ such persons, other than members of the board, as the board deems necessary and define the duties and determine the compensation of each;

(3) specify the duties of the board, including the duties to—

(A) develop, and submit to the Secretary for approval before implementation, any research plan or project to be carried out under this subchapter;

(B) submit to the Secretary for approval, budgets, on a fiscal year basis, of the board's anticipated expenses and disbursements in the administration of the order, including projected costs of carrying out dairy products research plans and projects;

(C) prepare and make public, at least annually, a report of the board's activities and an accounting for funds received and expended by the board;

(D) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(E) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(F) account for the receipt and disbursement of all funds entrusted to the board;

(4) prohibit any monies received under this subchapter by the board to be used in any manner for the purpose of influencing governmental policy or actions, except as provided in paragraph (2)(F); and

(5) require that each person receiving milk from producers for commercial use and any person marketing milk of that person's own production directly to consumers maintain and make available for inspection by the Secretary such books and records as may be required by the order and file with the Secretary reports at the time, in the manner, and having the content prescribed by the order.

(b) Agreements under order

Any agreement made under subsection (a)(2)(G) of this section shall provide that—

(1) the person with whom such agreement is made shall develop and submit to the board a research plan or project together with a budget that shows estimated costs to be incurred to carry out such plan or project;

(2) such plan or project shall become effective on the approval of the Secretary; and

(3) such person shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the board of activities conducted to carry out such plan or project, and submit such other reports as the Secretary or the board may require.

(c) Confidentiality of records; disclosure exceptions; penalty for violation

(1) Information, books, and records made available to, and reports filed with, the Secretary under subsection (a)(6) of this section shall be kept confidential by all officers and employees of the Department, except that such information, books, records, and reports as the Secretary deems relevant may be disclosed by such officers and employees in any suit or administrative proceeding that is brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party, and that involves the order issued under section 4533(b) of this title.

(2) Paragraph (1) shall not be construed to prohibit—

(A) the issuance of general statements, based on such information, books, records, and reports, of the number of persons subject to the order or of statistical data collected from such persons if such statements do not specifically identify the data furnished by any one of such persons; or

(B) the publication, at the direction of the Secretary, of the name of any person violating the order, together with a statement of the particular provisions of the order violated by the person.

(3) No information obtained under the authority of this section may be made available to any agency, officer, or employee of the United States for any purpose other than the implementation of this subchapter and any investigatory or enforcement action necessary to implement this subchapter. Any person who violates this paragraph shall be subject to a fine of not more than \$1,000, or to imprisonment for not

more than one year, or both, and, if such person is employed by the board or the Department, shall be terminated from such employment.

(Pub. L. 98-180, title I, §133, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1369.)

§ 4535. Petition and review; enforcement; investigations

The provisions of sections 4509, 4510, and 4511 of this title shall apply, except when inconsistent with this subchapter, to the Institute, the board, the persons subject to the order issued under section 4533(b) of this title, the jurisdiction of district courts of the United States, and the authority of the Secretary under this subchapter in the same manner as such sections apply with respect to subchapter I of this chapter.

(Pub. L. 98-180, title I, §134, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1371.)

§ 4536. Dairy Research Trust Fund

(a) Establishment

There may be established in the Treasury of the United States a trust fund to be known as the "Dairy Research Trust Fund" if the Institute is established under section 4532 of this title and a dairy products research order issued under section 4533 of this title is effective during such fiscal year.

(b) Authorization of appropriations; transfer of moneys; investments

(1) There is authorized to be appropriated to the Fund or transferred from moneys available to the Commodity Credit Corporation for deposit in the Fund, \$100,000,000.

(2) Moneys deposited in the Fund under paragraph (1) shall be invested by the Secretary of the Treasury in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Interest, dividends, and other payments that accrue from such investments shall be deposited in the Fund and also shall be so invested, subject to subsection (c) of this section.

(c) Availability of moneys for authorized and approved activities

Moneys in the Fund, other than moneys appropriated or transferred under paragraph (1) of subsection (b) of this section, shall be available to the board, in such amounts, and for such activities authorized by this subchapter, as the Secretary may approve.

(Pub. L. 98-180, title I, §135, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1371.)

§ 4537. Termination of order, Institute, and Fund

(a) Termination or suspension of order

The Secretary, whenever the Secretary finds that the order issued under this subchapter or any provision of such order obstructs or does not tend to facilitate the expansion of markets for

milk and dairy products marketed in the United States, shall terminate or suspend the operation of the order or such provision.

(b) Dissolution of Institute

If the Secretary terminates the order, the Institute shall be dissolved 180 days after the termination of the order.

(c) Disposal of moneys in Fund

If the Institute is dissolved for any reason, the moneys remaining in the Fund shall be disposed of as shall be agreed to by the board and the Secretary.

(Pub. L. 98-180, title I, §136, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1371.)

§ 4538. Additional authority

(a) No provision of this subchapter shall be construed to preempt or supersede any other program relating to milk or dairy products research organized and operated under the laws of the United States or any State.

(b) The provisions of this subchapter applicable to the order issued under section 4533(b) of this title shall be applicable to any amendment to the order.

(Pub. L. 98-180, title I, §137, as added Pub. L. 99-198, title I, §121, Dec. 23, 1985, 99 Stat. 1372.)

CHAPTER 77—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

Sec.	
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§ 4601. Findings and purposes

(a) Findings

Congress makes the following findings:

(1) Honey is produced by many individual producers in every State in the United States.

(2) Honey and honey products move in large part in the channels of interstate and foreign commerce, and honey which does not move in such channels directly burdens or affects interstate commerce.

(3) In recent years, large quantities of low-cost, imported honey have been brought into the United States, replacing domestic honey in the normal trade channels.

(4) The maintenance and expansion of existing honey markets and the development of new or improved markets or uses are vital to the welfare of honey producers and those concerned with marketing, using, and processing honey, along with those engaged in general ag-

ricultural endeavors requiring bees for pollinating purposes.

(5) The honey production industry within the United States is comprised mainly of small- and medium-sized businesses.

(6) The development and implementation of coordinated programs of research, promotion, consumer education, and industry information necessary for the maintenance of markets and the development of new markets have been inadequate.

(7) Without cooperative action in providing for and financing such programs, honey producers, honey handlers, wholesalers, and retailers are unable to implement programs of research, promotion, consumer education, and industry information necessary to maintain and improve markets for these products.

(8) The ability to develop and maintain purity standards for honey and honey products is critical to maintaining the consumer confidence, safety, and trust that are essential components of any undertaking to maintain and develop markets for honey and honey products.

(9) Research directed at improving the cost effectiveness and efficiency of beekeeping, as well as developing better means of dealing with pest and disease problems, is essential to keeping honey and honey product prices competitive and facilitating market growth as well as maintaining the financial well-being of the honey industry.

(10) Research involving the quality, safety, and image of honey and honey products and how that quality, safety, and image may be affected during the extraction, processing, packaging, marketing, and other stages of the honey and honey product production and distribution process, is highly important to building and maintaining markets for honey and honey products.

(b) Purposes

The purposes of this chapter are—

(1) to authorize the establishment of an orderly procedure for the development and financing, through an adequate assessment, of an effective, continuous, and nationally coordinated program of promotion, research, consumer education, and industry information designed to—

(A) strengthen the position of the honey industry in the marketplace;

(B) maintain, develop, and expand domestic and foreign markets and uses for honey and honey products;

(C) maintain and improve the competitiveness and efficiency of the honey industry; and

(D) sponsor research to develop better means of dealing with pest and disease problems;

(2) to maintain and expand the markets for all honey and honey products in a manner that—

(A) is not designed to maintain or expand any individual producer's, importer's, or handler's share of the market; and

(B) does not compete with or replace individual advertising or promotion efforts de-